

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

George J. Young, Sr. and	: CIVIL ACTION
Gladys I. Young, husband and wife	:
	:
v.	:
	:
James Keith Sullwold, Jr. and	:
Royster Trucking, Inc.,	: NO. 00-2923

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

September 27, 2000

The defendants, a trucking company and its employee, move to dismiss plaintiffs' complaint for improper venue and lack of personal jurisdiction. The plaintiffs oppose, or, in the alternative, request that the court transfer the action to a proper venue pursuant to 28 U.S.C. § 1406. Finding that this court lacks personal jurisdiction over both defendants and that venue is improper in this judicial district, the action will be transferred to the United States District Court for the Northern District of Iowa.

BACKGROUND

Plaintiffs George and Gladys Young allege they were injured when a truck driven by defendant Sullwold, an employee of defendant Royster Trucking, collided with plaintiffs' mobile home. The accident occurred on June 23, 1998 on Highway 71, in or around Greenville, Iowa.

Plaintiffs are residents of Pennsylvania. Defendant Royster

Trucking is incorporated in Iowa with its principal place of business in Iowa. Defendant Sullwold is a resident of Waukeez, Iowa. This court has subject matter jurisdiction based upon the diversity of the parties. See 28 U.S.C. § 1332(a)(1).

DISCUSSION

Defendants move to dismiss this action pursuant to Rule 12(b)(2)-(3) of the Federal Rules of Civil Procedure for lack of personal jurisdiction and improper venue.

(A) Personal Jurisdiction

Under Federal Rule of Civil Procedure 4(e), a federal court may assert personal jurisdiction over a nonresident defendant to the extent permitted by the law of the state in which the court sits. The law of Pennsylvania authorizes courts in the state to exercise jurisdiction over nonresidents "to the fullest extent allowed under the Constitution of the United States." 42 Pa. C.S.A. § 5322(b). This provision directs a court to exercise jurisdiction over any nonresident defendant, so long as the exercise comports with the due process requirements of the Fourteenth Amendment.

Due process requires that the defendant have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe v. Washington, 326 U.S. 310, 316 (1945)(citations omitted). If the claims presented

arise out of the defendant's activity in the forum state, the defendant need only have minimum contacts with that forum for the court to exercise personal jurisdiction. See Schwilm v. Holbrook, 661 F.2d 12, 14 (3d Cir. 1981); Surgical Laser Technologies, Inc. v. C.R. Bard, Inc., 921 F. Supp. 281, 283 (E.D. Pa. 1996). If the claims do not arise from a defendant's forum related activity, a higher standard applies: plaintiff must demonstrate that the defendant maintains "continuous and substantial" contacts with the forum before a court may exercise personal jurisdiction. Reliance Steel Products v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 588-589 (3d Cir. 1982)(citations omitted); see also Rittenhouse & Lee v. Dollars & Sense, Inc., 1987 WL 9665 (E.D. Pa. 1987).

The claims of the plaintiffs George and Gladys Young bear no relationship to any contact the defendants have with Pennsylvania. The claims arise from an automobile accident that occurred in Iowa. For this court to exercise personal jurisdiction over the defendants, plaintiffs must establish that each of the defendants maintains continuous and substantial contacts with Pennsylvania. Plaintiffs bear the burden of producing evidence demonstrating the substantial contacts of each defendant with Pennsylvania, but, where a conflict arises the court must consider the pleadings and affidavits in the light most favorable to the plaintiffs as the non-moving party. Lieb

v. American Pacific International, Inc., 489 F. Supp. 690, 694 (E.D. Pa. 1990); see also Gehling v. St. George's Sch. of Med., 773 F.2d 539, 542 (3d Cir. 1985).

(1) Defendant Sullwold

Plaintiffs' complaint fails to allege jurisdiction over defendant Sullwold, a resident of Waukee, Iowa. Plaintiffs have not produced any evidence demonstrating that defendant Sullwold has any contacts with Pennsylvania. Plaintiffs appear to claim the residency and contacts of Sullwold are irrelevant because he was acting as an employee of defendant Royster Trucking at the time of the accident, but personal jurisdiction over an employee does not automatically follow from jurisdiction over his corporate employer. See Keeton v. Hustler Magazine, 465 U.S. 770, 781 n.13 (1983); Rush v. Savchuk, 444 U.S. 322, 327-29 (1980). Without any evidence of contacts with this state or the agreement of defendant Sullwold, the court may not assert jurisdiction over him.

(2) Defendant Royster Trucking

Plaintiffs claim that defendant Royster Trucking has sufficient contacts with Pennsylvania for the proper exercise of personal jurisdiction. Plaintiffs assert that Royster Trucking holds itself out as a transporter of goods willing to deliver anywhere in the country. They offer as evidence of this willingness the affidavit of Deborah K. Schaffer. Ms. Schaffer

averts that she contacted Royster Trucking about the possibility of transporting her belongings from South Dakota, through Pennsylvania, to New Jersey. An agent of Royster Trucking, by quoting her a price for the job, tacitly acknowledged that Royster would drive through Pennsylvania, availing itself of State facilities such as the roadways. In response, the president of Royster Trucking avers in his affidavit that his company no longer makes deliveries in Pennsylvania and has not sent a truck through Pennsylvania since October, 1999.

Even taken in the light most favorable to the plaintiffs, the evidence produced does not show that defendant Royster Trucking has had substantial and continuous contacts with Pennsylvania. To constitute continuous and substantial contacts, the plaintiff must "show that [the defendants] carry on a continuous and systematic part of their general business within this Commonwealth." Gehling v. St. George's Sch. of Med, 773 F.2d 539, 541 (1985)(citing 42 Pa. C.S.A. § 5301(a)(2)(iii)). Plaintiffs' evidence at best shows that defendant Royster Trucking occasionally might have been willing to travel through Pennsylvania. Plaintiff has not produced any evidence that Royster Trucking has traveled through Pennsylvania continuously or that Royster's activities in Pennsylvania constitute a substantial part of the defendant's business. This court has no personal jurisdiction over defendant Royster Trucking.

(B) Venue

Under 28 U.S.C. §1391(a), in a diversity action venue lies in either: (1) a district in which any defendant resides if all defendants are from the same state; or (2) the district in which the events underlying the claim occurred. See 28 U.S.C. § 1391(a)(1)-(2). Venue is not proper in this judicial district under either of these statutory provisions.

This court cannot establish venue under §1391(a)(1) because neither defendant resides in this judicial district. Under § 1391(c), a corporation is a resident of any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. This court lacks personal jurisdiction over defendant Royster Trucking, so Royster trucking does not reside in this district. Defendant Sullwold also does not reside in this district; plaintiffs acknowledge that Sullwold resides in Iowa.

Venue also cannot be established under § 1391(a)(2), granting venue in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." It is undisputed that the car accident occurred in the Northern District of Iowa, not the Eastern District of Pennsylvania.

If venue cannot be established in any judicial district under either §§ 1391(a)(1) or (2), the action may be brought in

any district with personal jurisdiction over any defendant at the time the action is commenced. See id. at § 1391(a)(3).

Defendants correctly assert that venue lies in Iowa under either § 1391(a)(1) or (a)(2).¹ As this action might have been brought in a judicial district in Iowa under either of these provisions, this court may not entertain venue under § 1391(a)(3).

(C) Forum Non Conveniens

Plaintiffs claim that an Iowa judicial district is a forum non conveniens under 28 U.S.C. § 1404(a). Section 1404(a) states, "in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Plaintiffs argue that even if this action might have been brought in Iowa, it is such an inconvenient forum for the plaintiffs that the interests of justice require this court to permit the action to proceed in this forum. Plaintiffs submitted the affidavit of Gladys Young, who avers that the poor health of the plaintiffs makes their travel to Iowa very difficult. She also states that

¹ Under §1391(a)(1) venue lies in any district where one of the defendants resides if all defendants are from the same state. Both defendants reside in Iowa. Defendant Royster Trucking is headquartered in Duncombe, Iowa, in the Northern District of Iowa, and venue could properly be established in that judicial district under § 1391(a)(1). Section §1391(a)(2) states that venue lies where the events giving rise to the claims occurred. The car accident giving rise to plaintiffs claims occurred in or around Greenville, Iowa, a town in the Northern District of Iowa.

approximately ten Pennsylvania physicians have treated the plaintiffs and would have to be flown to Iowa to testify in person. Plaintiffs claim that the expense and inconvenience of bringing the action in Iowa should compel this court to allow the action to remain here.

Section 1404(a) permits transfer only to a district in which the action "might have been brought." As this court is without jurisdiction over the defendants, this is not a judicial district in which the action might have been brought. A court is not permitted to retain an action when it has no personal jurisdiction over the defendants merely for the convenience of the plaintiffs.

(D) Transfer under 28 U.S.C. §1406(a):

Plaintiffs propose that, should the court determine it cannot retain the action, it should not dismiss, but transfer the action to Iowa under 28 U.S.C. §1406(a). Section 1406(a) permits a district court to transfer an action in which the venue is improper to "any district or division in which it could have been brought." Lack of personal jurisdiction over the defendants does not prevent a court from transferring an action under §1406(a). See Goldlawr v. Heiman, 369 U.S. 463, 465-66 (1962) ("Nothing in that language indicates that the operation of the section was intended to be limited to actions in which the transferring court has personal jurisdiction over the defendants.").

Both jurisdiction and venue lie in the Northern District of Iowa. See supra note 1. Iowa is the home state of both defendants, and the Northern District is the situs of the accident and the location of defendant Royster Trucking's headquarters. It is in the interest of justice to transfer rather than dismiss this action.

CONCLUSION

Neither James Sullwold nor Royster Trucking are subject to personal jurisdiction in Pennsylvania. The actions of the defendants on which the claims are based did not take place here, and neither defendant maintains continuous and substantial contacts with the forum.

The Eastern District of Pennsylvania is not a proper venue for the resolution of these claims. The accident on which the claims are based occurred in Iowa, and both defendants reside in Iowa.

Transfer under section 1406(a) is appropriate and is within the sound discretion of this court. This action will be transferred to the Northern District of Iowa; defendants' motion to dismiss will be denied.

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ORDER

AND NOW, this 27th day of September, 2000, in consideration of Defendant James Keith Sullwold, Jr. and Royster Trucking, Inc.s' Motion to Dismiss Plaintiffs' Complaint and Plaintiffs' Answer thereto, it is **ORDERED** that:

1. Defendants' motion is **DENIED**.
2. Pursuant to 28 U.S.C. § 1406(a), this case is **TRANSFERRED FORTHWITH** to the Northern District of Iowa, a district in which it could have been brought.

S.J.